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ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

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April 18, 2013

The Honorable Thomas E. Perez  
Assistant Attorney General  
Civil Rights Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Perez:

I am in receipt of a letter sent from Peter J. Kadzik, Principal Deputy Assistant Attorney General for Legislative Affairs at the Department of Justice, regarding the Committee's inquiry into your use of a personal, non-official e-mail account to conduct official Department of Justice business.<sup>1</sup> This letter concedes that you have committed at least 34 separate violations of the Federal Records Act and that you only addressed these violations *after* receiving the Committee's subpoena. I am disappointed that you continue to resist the Committee's oversight duties and that you have chosen to not fully comply with the terms of the subpoena issued on April 10, 2013.

Mr. Kadzik's letter suggests that you have used your personal, non-official e-mail account almost 1,200 times to conduct official Department business since you became the Assistant Attorney General for the Civil Rights Division in October 2009.<sup>2</sup> This recurrent use of your personal e-mail amounts to roughly one e-mail per day since you assumed the duties of Assistant Attorney General. Contrary to Mr. Kadzik's assertions, this large volume of personal, non-official e-mails indicates that you did not use your personal, non-official e-mail account in "limited circumstances" to perform your official duties. Instead, it appears that your use of your personal, non-official e-mail account to conduct official Department business has been frequent and routine.

Rather than fully producing all documents relating or referring to your use of your personal e-mail account to conduct official Department business, the Department offered Committee staff the opportunity to review only 34 responsive e-mails *in camera*.<sup>3</sup> The Committee agreed to this review without waiving its right to the production and possession of all

<sup>1</sup> Letter from Peter J. Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (Apr. 17, 2013).

<sup>2</sup> See *id.*

<sup>3</sup> *Id.*

responsive documents.<sup>4</sup> This *in camera* review occurred on April 17, 2013, and included several documents that contained redactions either to the substance of the e-mail or to the identity of person with whom you corresponded.

This review of a very narrow subset of responsive documents indicated that you used your personal, non-official account to conduct official Department business with at least twelve separate individuals from organizations such as Planned Parenthood, the *New York Times*, and *Talking Points Memo*. The fact that you have distributed your personal, non-official e-mail address to such a wide variety of professional contacts raises questions about your recognition of the importance of avoiding the use of your personal e-mail account to conduct official business.

The e-mails reviewed by the Committee demonstrate substantial deficiencies in your compliance with the Federal Records Act. In one e-mail, a reporter for the *New York Times* asked you about how he should advise his colleague as to when the Department would announce a consent decree with the City of New Orleans, Louisiana. You responded by apparently giving this individual non-public information. You wrote: "I would advise him to be there by noon on Tuesday. I would further advise him to give me a call if he wants. Attorney General will be there to make announcement."<sup>5</sup> The announcement was made by Attorney General Holder on Tuesday, July 24, 2012.<sup>6</sup> In another e-mail from you to the same *New York Times* reporter about the Department's settlement with Countrywide Financial Corporation in December 2011, you again appeared to provide him with non-public information. You wrote: "[J]ust closed deal 15 minutes ago. Will announce tomorrow at 3."<sup>7</sup> These e-mails, as well as the other e-mails reviewed *in camera*, were not captured by Department records systems until after the Committee issued its subpoena.

President Obama issued a memorandum in November 2011 to improve records management and to "promote openness and accountability by better documenting agency actions and decisions."<sup>8</sup> In this spirit, the Department of Justice has adopted procedures and directives to "adequately and properly document the organization, functions, policies, decisions, procedures, and essential transactions of the agency."<sup>9</sup> Although it is unclear what guidance you received from the Department concerning the use of a personal e-mail account for official business, at least one other federal agency strictly prohibits the use of any non-agency e-mail system to conduct official business.<sup>10</sup> Your refusal to produce all responsive documents – as well as the redacted nature of the documents the Department of Justice made available for *in camera* review – frustrates the Committee's ability to determine whether you are in full compliance with the Federal Records Act and other federal laws.

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<sup>4</sup> Email from David Brewer, H. Comm. on Oversight & Gov't Reform, to Molly Gaston, U.S. Dep't of Justice (Apr. 17, 2013).

<sup>5</sup> Committee staff review of documents (Apr. 17, 2013).

<sup>6</sup> See U.S. Dep't of Justice, Justice Department Announces Consent Decree with City of New Orleans to Resolve Allegations of Unlawful Misconduct by New Orleans Police Department (July 24, 2012).

<sup>7</sup> Committee staff review of documents (Apr. 17, 2013).

<sup>8</sup> 76 Fed. Reg. 75,423 (Nov. 28, 2011).

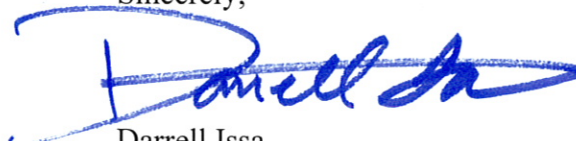
<sup>9</sup> U.S. Dep't of Justice, Records Management, <http://www.justice.gov/open/records.html>.

<sup>10</sup> See Letter from David Vitter, S. Comm. on Env't & Pub. Works, & Darrell Issa, H. Comm. on Oversight & Gov't Reform, to James B. Martin, U.S. Envtl. Prot. Agency (Jan. 29, 2013) (citing *NRMP Alert: Do Not Use Outside E-mail Systems to Conduct Agency Business*).

You have a personal responsibility to comply with the Committee's subpoena. To date, you have not personally complied with the Committee's request or the terms of the subpoena. In addition, you have not personally certified the veracity of the statements made by the Department in this matter and you have not certified that the Department's assertion about the volume of responsive communications is accurate and complete. The Department has an unfortunate history of misleading Congress,<sup>11</sup> and you have a personal record of providing incomplete testimony to the U.S. Commission on Civil Rights.<sup>12</sup> You have also provided testimony to this Committee while investigating the *quid pro quo* between the Department and the City of St. Paul that was largely contradicted by other testimony and documentary evidence.<sup>13</sup> Given this previous experience, the Committee requires the production of all responsive records to ascertain the true degree of your compliance with the Federal Records Act.

Notwithstanding Mr. Kadzik's letter on your behalf, you remain noncompliant with the terms of the subpoena issued to you on April 10, 2013. Therefore, I once again request that you immediately produce to the Committee all records, in unredacted form, responsive to the subpoena. This request includes the approximately 1,200 e-mail communications that the Department of Justice has already identified as responsive. Thank you for your prompt attention to this matter.

Sincerely,



Darrell Issa  
Chairman

cc: The Honorable Bob Goodlatte, Chairman  
Committee on the Judiciary

The Honorable Charles E. Grassley, Ranking Minority Member  
Senate Committee on the Judiciary

The Honorable Elijah E. Cummings, Ranking Minority Member  
Committee on Oversight and Government Reform

The Honorable John Conyers, Jr., Ranking Minority Member  
House Committee on the Judiciary

The Honorable Patrick J. Leahy, Chairman  
Senate Committee on the Judiciary

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<sup>11</sup> Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Eric H. Holder, Jr., U.S. Dep't of Justice (June 5, 2012).

<sup>12</sup> See Letter from Peter Kirsanow, U.S. Civil Rights Comm'n, to Tom Harkin & Lamar Alexander, S. Comm. on Health, Education, Labor, & Pensions (Mar. 18, 2013).

<sup>13</sup> H. Comm. on Oversight & Gov't Reform, S. Comm. on the Judiciary, & H. Comm. on the Judiciary, DOJ's *Quid Pro Quo* with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law at 45-49 (Apr. 15, 2013).